

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
CIVIL ACTION NO. 11-296-HJW-JGW**

**CHRISTOPHER F. CASTANIAS**

**PLAINTIFF**

**V.**

**ALECIA C. LIPTON, et al.,**

**DEFENDANTS**

**MEMORANDUM ORDER**

Pending are several motions, including pro se plaintiff's motion for leave to file an amended complaint. Doc. 27. For the following reasons, the motion for leave to file an amended complaint will be granted as unopposed and defendant's unopposed motion for an extension of time to respond to the amended complaint will be granted. Defendant's procedural motion to withdraw its pending motion for judgment on the pleadings also will be granted and plaintiff's motion for an extension of time to respond to the motion for judgment on the pleadings will be denied as moot.

Plaintiff filed this § 1983 action in May 2011 against three defendants relating to plaintiff having been incarcerated for failure to pay child support. Doc. 1. Plaintiff's claims against two defendants have been dismissed [Docs. 15, 19] and the only remaining defendant is the Warren County Ohio Child Support Enforcement Agency ("the Agency" or "defendant").

Plaintiff's tendered amended complaint seeks to add claims against Beth Anne Schoor, director of the Agency, in both her individual and official capacities; Rodrick Hamilton, deputy director of the Agency, in both his official and individual capacities; and two Doe defendants, who plaintiff contends are unknown employees of the Agency whose identities will be revealed during discovery. Plaintiff contends he could not have raised the new claims earlier because

they are based upon information he recently received from an open records request.

Federal Rule of Civil Procedure 15(a)(2) provides that “[t]he court should freely give leave [to amend a pleading] when justice so requires.” Defendant has not objected to the motion for leave to amend.<sup>1</sup> The motion therefore will be granted as unopposed.

Instead of raising any objections to the motion for leave to file an amended complaint, defendant has filed a motion asking the Court for an extension of time to respond to the amended complaint. Doc. 29. In his motion for leave to file an amended complaint, plaintiff states that he “will not object to an extension of time if requested to respond to this Complaint.” Doc. 27, p.1. Defendant’s motion for extension of time to respond to the amended complaint will therefore also be granted as unopposed.

On November 23, 2011, defendant filed a motion for judgment on the pleadings. Doc. 25. However, in its motion for extension of time defendant states that the motion for judgment on the pleadings is moot. Doc. 29, p.2 (“Thus, this Court need not grant additional time to Plaintiff to respond to the now moot Motion for Judgment on the Pleadings filed on November 23, 2011.”). The Court will construe defendant’s statement as a procedural motion to withdraw its motion for judgment on the pleadings. That construed motion will be granted. As the motion for judgment on the pleadings has been procedurally withdrawn by defendant, plaintiff’s motion

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<sup>1</sup>Defendant erroneously states in a motion for extension of time to respond to the amended complaint that plaintiff’s amended complaint has been timely filed. Doc. 29, p.2. However, plaintiff’s proposed amended complaint was tendered—not filed—because it was not submitted in time to be filed as a matter of right. Fed.R.Civ.P. 15(a)(1)(B) provides in relevant part that a party may amend its pleading as a matter of course within “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Defendant filed its answer to plaintiff’s extant complaint on June 10, 2011. Doc. 9. Plaintiff accordingly must receive leave of Court to file an amended complaint.

for an extension of time to respond to the motion for judgment on the pleadings [Doc. 28] will be denied as moot.

Accordingly, **IT IS ORDERED:**

1. Plaintiff's motion for leave to file a first amended complaint [Doc. 27] is **granted** as unopposed and the tendered amended complaint [Doc. 27-1] shall be deemed filed of record in this action; and

2. Defendant's construed procedural motion to withdraw its November 23, 2011 motion for judgment on the pleadings [Doc. 29] is **granted**; and

3. Defendant's motion for an extension of time to respond to the amended complaint [Doc. 29] is **granted** as unopposed, and defendant Warren County Ohio Child Support Enforcement Agency shall answer or otherwise respond to the amended complaint by January 31, 2012; and

4. Plaintiff shall submit summonses with the proper contact information for Schoor and Hamilton to the Clerk of Court; and

5. Upon receipt of the summonses from plaintiff, the Clerk of Court shall finalize the summonses (affixing a signature, etc.) and shall then give the summonses to the United States Marshal, who shall serve a copy of the complaint, summons and this order upon Beth Anne Schoor and Rodrick Hamilton as directed by plaintiff. All costs of service shall be advanced by the United States; and

6. Plaintiff's motion for extension of time to respond to the motion for judgment on the pleadings [Doc. 28] is **denied as moot**.

This the 13<sup>th</sup> day of January, 2012.

s/ J. Gregory Wehrman  
J. Gregory Wehrman  
United States Magistrate Judge